Counsel for American Federation of Labor

INDEX

TABLE OF CASES

IN THE

Supreme Court of the United States

OCTOBER TERM, 1953

NO. 56

JOSEPH GARNER AND A. JOSEPH GARNER, trading as CENTRAL STORAGE & TRANSFER COMPANY,

Petitioners,

vs.

TEAMSTERS, CHAUFFEURS AND HELPERS, LOCAL UNION NO. 776 (AFL), ED LONG, President, ALLEN KLINE, Business Manager, its other officers and agents.

ON WRIT OF CERTIORARI TO THE SUPREME COURT OF PENNSYLVANIA

BRIEF OF AMERICAN FEDERATION OF LABOR, AMICUS CURIAE

Reasons for Intervention as Amicus Curiae

The American Federation of Labor has requested and has been granted permission by the parties to this proceeding to file a brief amicus curiae. It has sought intervention because of the overwhelming importance of a determination respecting jurisdiction to interpret and enforce the provisions of the Taft-Hartley Act or to enforce provisions of state laws which parallel the Taft-Hartley Act. While that issue remains unresolved, labor organizations affiliated with the American Federation of Labor throughout the

country have been and are being beset with a multiplicity of injunction proceedings in the state courts under which such state courts are being asked to and have been issuing injunctions in fields affecting interstate commerce, on the basis of union conduct which the state courts deem violative of the National Labor Relations Act, as amended in 1947, or on the basis of state laws which forbid activities already forbidden by the Federal Act. A number of these state court proceedings have been reported and are set forth in the brief of the employer-petitioners; many more remain unreported, but under them various customary activities of labor organizations have been enjoined in wholesale fashion without resort to the procedures specified in the Federal Act. Unless the remedy for alleged violations of the National Labor Relations Act or a state counterpart thereof can be invoked only in the exclusive and safeguarded method provided by Congress, namely, upon application of the National Labor Relations Board in the federal courts, the most shocking aspects of that period sometimes referred to as the era of "government by injunction" might well be repeated.

Statement of the Case

The briefs filed by the parties hereto indicate that there is no essential dispute concerning the facts in this case, and such facts are well stated by the Supreme Court of Pennsylvania in the majority opinion filed herein. As indicated by that decision, it can be assumed for the purpose of this appeal that the union party herein has engaged in activities which violate Sections 8 (a) (3) and 8 (b) (2) of the Taft-Hartley Act, as well as Section 6 (c) of the Pennsylvania Labor Relations Act which is the exact counterpart of said Section 8 (a) (3) of the federal law. In substance, the alleged illegal conduct consists of an attempt to coerce plaintiff-employers to commit a violation of such sections of the state and federal law by coercing such employers' employees to become members of the respondent.

union. Since interstate commerce was affected by the activities in question, if Congress can be shown to have intended to grant exclusive jurisdiction over the remedying of such alleged illegal conduct in the National Labor Relations Board and the federal courts, the state court would, as was determined by the Pennsylvania Supreme Court herein, have no jurisdiction to enjoin the alleged illegal activities. The ultimate question in this case, then, is—did Congress intend to occupy the field insofar as regulation or prohibition of this particular activity is concerned?

Argument

I

Petitioners' Asserted Rights Are "Public" Rather Than "Private" in Nature.

Before discussing the all-important question of Congressional intent, it might be well to dispose of the major premise of what appears to be the employer-petitioners' principal argument. Petitioners' argument, in essence, is that petitioners are here seeking protection of "private," as distinguished from "public," rights and that, since such rights are "private," the state courts are free to enjoin activities which violate them even though the identical protections would not be available if such rights were "public," Congress having intended to vest exclusive jurisdiction in the federal labor board to protect "public" rights only. Faced with the determination of this Court in the *Plankinton* case (*Plankinton v. Wisconsin Board*, 338 U.S. 953, discussed later in this brief), petitioners herein apparently concede that, were the state-granted rights which it here seeks to vindicate "public" in nature, the jurisdiction of the federal courts in respect to them would be exclusive. It is submitted that both petitioners' premise and petitioners' conclusion are without foundation; that the rights asserted herein are no more "private" than those asserted in the

Plankinton case, and even if they could be considered "private" in nature, nevertheless Congress has preempted the field, so that the state court would have no jurisdiction to issue the injunction sought herein.

The "right" which petitioners seek to protect is the right under state law to be free from compulsion by picketing to require them to violate the Pennsylvania Labor Relations Act by discriminating against their employees by forcing them into the picketing union.

That petitioners' asserted "rights" herein are of a "private" nature is merely asserted or assumed; it is not even indicated, let alone demonstrated, just how petitioners' alleged rights under the law of Pennsylvania can be considered "private." The fact and the law of the matter are, however, that these claimed rights derive exclusively and solely from the state Labor Relations Act which, as the counterpart of the federal Labor Relations Act, seeks solely to protect public rights. The determination of the Pennsylvania Supreme Court in this very case is conclusive on this question, for it indicates that petitioners' alleged rights derive not from the common law and not from some statute creating or protecting so-called "personal" rights, but rather from an act passed purely in the public interest. After quoting the identical language of Section 6 (c) of the Pennsylvania Labor Relations Act and Section 8 (a) (3) of the Federal Act, which outlaw *employer* activities designed to encourage or discourage membership in a union, the Court then quotes Section 8 (b) (2) of the Federal Act, which makes it an unfair practice for a *union* to cause an employer to violate Section 8 (a) (3) of the federal law, and states that by judicial construction of the state Anti-Injunction Act, as elaborated upon in *Wilbank v. Chester and Delaware Counties Bartenders, Hotel and Restaurant Employees Union*, 360 Pa. 48, 60 A. (2d) 21, certiorari denied 336 U.S. 945, it is likewise unlawful for

a labor organization to cause an employer to violate Section 6 (c) of the Pennsylvania Act. In this connection the Court states:

> "Thus it will be seen that the Act of Congress prohibits the same activity on the part of a labor organization in this respect as does the Pennsylvania Labor Relations Act, the only difference being that the Federal act would stamp this picketing as an unfair labor practice, whereas the State act does not so list it but our courts have declared it to be unlawful because aimed to coerce the employer into committing what the act does declare to be an unfair labor practice on his part."

Clearly the ultimate rights for which petitioners herein seek protection are derived from the Pennsylvania Labor Relations Act which is expressly declared to be in the protection of the public interest. Section 2 (e) of that Act states as follows:

> "This Act shall be deemed an exercise of the police power of the Commonwealth of Pennsylvania for the protection of the public welfare, prosperity, health, and peace of the people of Pennsylvania."

The Pennsylvania Labor Relations Act is patterned upon the Federal Labor Relations Act. *In re Hodson Motor Co.* (Court of Common Pleas, Alleghany County), 5 CCH Labor Cases, ¶60, 927.

Under Section 8 of the Pennsylvania Act, the State Board is given exclusive power to enforce the unfair labor practice provisions of the state Act just as the federal Board, under the Wagner Act, was given such exclusive power. Nowhere in the entire Act, nor in any judicial construction of any provision thereof, is there any indication that the rights created and protected by the Act were intended to be private in nature. There is no more reason to assume or assert that the Pennsylvania Labor Relations Act created "private" rights than did the Wisconsin Labor Relations Act

which was before this Court in the *Plankinton* case, *supra*. Yet this Court had no difficulty in concluding that an attempt by the state of Wisconsin to enforce, in a field affecting interstate commerce, certain unfair labor practice sections of the Wisconsin Act which had a counterpart in the federal Act was invalid, the Congress having preempted the field.

II

Even Though Petitioners' Asserted Rights Are "Private," Nevertheless the State Courts Would Have No Jurisdiction to Enforce Them If Congress Has Regulated Respecting Such Rights.

In any event discussion of whether the rights here asserted by petitioners are "private" or "public" is beside the point. Even if such rights be deemed private in nature, nevertheless the state courts would have no jurisdicton because Congress has preempted the entire field of regulation or prohibition in respect to the particular activity which is the subject of the state injunction proceedings. It makes no difference whether the claim for relief is predicated on state statute, state common law, or on federal law, or whether the rights involved are public or private; as long as the particular activity which is claimed to be illegal and which is sought to be restrained is specifically regulated by Congress, that activity can be restrained only in the manner provided for by Congress, namely, upon application by the federal Board in the federal courts. The only relevant consideration is whether the particular activity is in the "field" of regulation embraced under the federal law. If so, Congress's decision as to the rights of the parties leaves no room for survival of causes of action, either public or private, based on state statutory or common law which regulate or prohibit that identical activity. The *Plankinton Packing Co.* case, *supra*, is closely in point. There, all members of this Court deemed so obvious as to require no

discussion the proposition that the federal Act had occupied the field as to those rights, obligations and remedies specifically there set forth so as to exclude even concomitant state action. In a *per curiam* decision, without opinion, this Court held in *Plankinton* that, once Congress had established specific rights and obligations in the field of industrial relations affecting commerce (in that case the rights of employees to refrain from joining labor organizations, and the obligation of employers to refrain from interfering with employees in the exercise of this right) and had afforded specific remedies for breach thereof (through the National Labor Relations Board), state agencies were precluded from exercising even concurrent jurisdiction even where no conflict might exist. As stated by this Court when in *Amalgamated Association v. Wisconsin Employment Relations Board*, 340 U.S. f.n. 12, p. 390, it had occasion to discuss *Plankinton*:

> "Since the NLRB was given jurisdiction to enforce the rights of the employees, it was clear that the Federal Act had occupied this field to the exclusion of state regulation. Plankinton and O'Brien both show that states may not regulate in respect to rights guaranteed by Congress in §7."

If, in the *Plankinton* case the action of the Wisconsin Board was stricken because the state had "superimposed upon federal outlawry of conduct as an 'unfair labor practice' its own finding of unfairness" (*Amalgamated Association v. Wisconsin Employment Relations Board*, 340 U.S. at 401), then also must be stricken any attempt by the state courts of Michigan to supersede or supplant, by invocation of a state law respecting the activity directly dealt with in the federal Act, the judgment of both the federal Board acting in its preliminary screening capacity under Section 10 (l) and the federal district court having jurisdiction to issue injunctive relief under that section. The occupation of the field by federal authority is equally clear in both

cases. Surely, if "states may not regulate in respect to rights guaranteed by Congress in Section 7," by the same token states may not remedy in respect to remedies prescribed by Congress in Section 10. It is submitted that *Plankinton* and the *Bethlehem Steel Co.* case (*Myers v. Bethlehem Shipbuilding Corp.*, 303 U.S. 41) which preceded it are conclusive in the instant case.

Also directly in point is dictum in the earlier case of *California v. Zook*, 336 U.S. 725, at 731, where this Court gave explicit recognition to the proposition that state attempts to provide remedies and enforcement mechanisms in addition to those provided for in the Taft-Hartley Act are invalid even though they might be helpful to the federal Board:

> "And when state enforcement mechanisms so helpful to federal officials are to be excluded, Congress may say so, as in the Taft-Hartley Act, 29 U.S.C.A. §160(a), 9 FCA Title 29, §160(a)."

The later case of *International v. O'Brien*, 339 U.S. 454, is likewise clear authority for the proposition that there can be no room for concurrent state regulation of activities specifically dealt with in the Taft-Hartley Act. There, a state law regulating strikes in interstate commerce was declared invalid because invading a field preempted by Congress. After reviewing the provisions of the federal law regulating peaceful strikes for wages, the Court concluded that "Congress occupied this field and closed it to state regulation."

It is significant also that courts of last resort in the states of California, New York and Minnesota have held with Pennsylvania; the following cases all hold that state courts have no jurisdiction to grant interim or other injunctive relief for alleged violations of the Taft-Hartley Act: *Gerry v. Superior Court*, 32 Cal. (2d). 119, 194 P. (2d) 689; *Ex Parte Di Silva*, 33 Cal. (2d) 76, 199 P. (2d) 6; *Costaro v.*

Simons, 277 App. Div. 1045, rev'd 302 N.Y. 318, 98 N.E. (2d) 454; *Norris Grain Co. v. Seafarers International Union*, 232 Minn. 91, 46 N.W. (2d) 94. Furthermore, the Courts of Appeal for the Eighth and Ninth Circuits, as well as various of the federal district courts have indicated sharp disagreement with the concept that remedies other than those specifically provided for in the federal Act are available: *See Amalgamated Association v. Dixie Motor Coach Corp.*, 170 F. (2d) 902 (C.A.8); *Schatte v. Theatrical Stage Employees*, 182 F. (2d) 158 (C.A.9), certiorari denied, 340 U.S. 827; *California Association v. Building Trades Council*, 178 F. (2d) 175 (C.A.9); *I.L.U. v. Sunset Line & Twine Co.*, 77 F. Supp. 119 (N.D. Cal.); *United Packing House Workers v. Wilson & Co.*, 80 F. Supp. 563 (N.D. Ill.); *Textile Workers Union v. Derryton Mills*, 28 LRRM 2540 (N.D. Ga., July 23, 1951); *Born v. Cease*, 101 F. Supp. 473 (D. Alaska); compare *Reavis v. I.B.E.W.*, 101 F. Supp. 542 (N. D. Tex.).

The following Federal District Court decisions all involve injunction suits removed from the state courts where they had been brought on a theory identical to the present one, namely, that "private" rights under state statutory or common law were sought to be protected. In each of these cases the respective district courts, in well-reasoned opinions, concluded that, since the activity sought to be enjoined had been the subject of federal regulation under the Taft-Hartley Act, the state courts were without jurisdiction.

Pocahontas Terminal Court v. Portland Building Trades Council, 93 F. Supp. 217 (U.S. District Court, D. Maine, S.D.), involved an attempt to invoke the common law of the State of Maine which gave a private cause of action to restrain secondary picketing for a closed shop. In sustaining the removal from the state court and in declining jurisdiction, District Judge Clifford held as follows:

"... Since Federal law has comprehensively entered

the field here involved, the door must be regarded as closed to parallel State Action.

"This Court, therefore, holds, on the authority of the very recent decision and analysis in *Automobile Workers v. O'Brien*, 339 U.S. 454 [18 Labor Cases ¶65,761] (1950), that because all of the activities alleged in the complaint to be illegal are within the scope and coverage of the union unfair labor practices provisions of the Taft-Hartley Act, there is no room for the application of State law."

A similar result was obtained in *Direct Transit Lines, Inc. v. Local Union 406, IBT* (D.C., W.D. Mich (1952)), 21 CCH Labor Cases ¶66,774, where a state court was held without jurisdiction to enjoin violations of a Michigan statute against secondary boycotts which had its counterpart in Section 8 (b) (4) of the Taft-Hartley Act, even when the complaint was later amended to allege other possible violations of Michigan law, which, however, in substance were subject to regulation under the federal law. See *Direct Transit Lines, Inc., v. Local Union 406, IBT*, 22 CCH Labor Cases ¶67,073. Denial by the District Courts of the motion to remand was affirmed by the U. S. Court of Appeals for the Sixth Circuit in 199 F. 2d 69.

In *Overton v. International Brotherhood of Teamsters* (Civil Action No. 3273), that same District Court held that a claim for injunctive relief predicated upon the alleged violation of a common law duty of a common carrier to furnish transportation to the general public was not entertainable in the state or federal courts because Congress and the Taft-Hartley Act had determined what labor activities did and what did not burden or interfere with interstate commerce.

In *Ryan v. Simons*, 277 App. Div. 1000, 100 N.Y.S. (2d) 18, affirmed 302 N.Y. 742, certiorari denied 342 U.S. 897, the New York courts held that an injunction suit in the state court, brought on the theory of a breach of a common law duty of agent to principal by entering into a contract with

an employer providing for a union shop, was, in substance, a claim predicated upon claimed discrimination in favor of union members which was a controversy involving unfair practices within the purview of the National Labor Relations Act, so that the state courts were without jurisdiction.

The foregoing four cases each involved, as does the present case, claims of invasion of alleged "private," as distinguished from "public" rights, arising by virtue of state statute or common law, and in all of them where the challenged union activity was one also regulated under the Taft-Hartley Act the courts found no jurisdiction to entertain the suit, Congress having preempted the field and having provided exclusive means for obtaining relief against such activities.

Assuredly in this case, if any, "This Court, in the exercise of its judicial function, must take the comprehensive and valid federal legislation as enacted and declare invalid state regulation which impinges on that legislation." (*Amalgamated Association v. Wisconsin Employment Relations Board, supra,* at 398.)

III

Congress Has Expressly Legislated Concerning the Rights Asserted by Petitioners and Has Provided Exclusive Remedies for the Protection of Such Rights. Accordingly the State Courts Are Without Jurisdiction, Congress Having Preempted the Field.

The foregoing discussion assumes but does not demonstrate Congressional intent to preempt the field. If such intent does exist, then, obviously, the instant claim for relief in the state court would fail, that court lacking jurisdiction. The remaining portion of this brief will be devoted to answering the ultimate question in this case, namely—*did Congress intend to exclude state action in a particular field in which Congress had power to legislate?* Where pos-

sible, such intent is determined by resort to the language of the Act. When that is not clear or is inconclusive, Congressional intent to preempt or exclude can be found either by resort to presumption, by resort to consideration of the rationales involved, or by resort to legislative history—to the explanations given in the course of debates or in committee reports. In the present case an intent to make the remedies of the Act exclusive is ascertainable not only in the Act itself but also by resort to any of the other three methods of determining such intent.

A. The Statutory Language Clearly Manifests Congressional Intent to Make the Remedies of the Act Exclusive.

What has Congress manifested in the statute itself regarding its will in respect to remedies for alleged violations of the Act? We can best begin by comparing the scope and nature of the Labor-Management Relations Act of 1947 (Taft-Hartley Act) with that of the National Labor Relations Act of 1935 (Wagner Act), with particular regard to the state of the law in respect to the question of remedy as it existed prior to the passage of the latter Act. There are two basic differences between the two Acts, both significant here. First, the 1947 Act undertook to prescribe broad regulations in the entire field of labor-management relations, embracing both union and employer activities. The earlier Act dealt solely with the problem of attempts by employers to destroy or impede the right of employees to organize, bargain collectively, and engage in certain concerted activities for their mutual aid and protection. Even though thus limited, the first Act was recognized as one in the public interest for the protection of public rights exclusively by a public agency, not for private individuals by private action. As stated by this Court in respect to the 1935 Act (*Amalgamated Utility Workers v. Consolidated Edison Co.*, 309 U.S. 261):

> "The Board as a public agency acting in the public interest, not any private person or group, not any em-

ployee or group of employees, is chosen as the instrument to assure protection from the described unfair conduct in order to remove obstructions to interstate commerce." (309 U.S., at 265.)

"... Congress has in this instance created a public agency entrusted by the terms of its creation with the exclusive authority for the enforcement of the provisions of the Act. ..." (309 U.S., at 269.)

"We think that the provision of the National Labor Relations Act conferring exclusive power upon the Board to prevent any unfair labor practice, as defined, —a power not affected by any other means of 'prevention that has been or may be established by agreement, code, law, or otherwise'—necessarily embraces exclusive authority to institute proceedings for the violation of the court's decree directing enforcement. The decree in no way alters, but confirms, the position of the Board as the enforcing authority. It is the Board's order on behalf of the public that the court enforces. It is the Board's right to make that order that the court sustains. The Board seeks enforcement as a public agent, not to give effect to a 'private administrative agency.'" (309 U.S., at 269.)

In the 1947 Act Congress considered numerous proposals embracing almost every aspect of labor relations and emerged with a comprehensive code regulating relationships in that entire field. Following extensive debate and argument in respect to many hundreds of proposals, Congress finally arrived at specific conclusions respecting rights, duties, liabilities and immunities of employers, employees and labor organizations in the field of labor relations and selected specific remedies and forums for the protection and vindication thereof. Compare *General Committee v. Missouri, K. & T. R. Co.*, 320 U.S. 323, at 332, and see *Rabouin v. National Labor Relations Board*, 195 F. (2d) 906, at 912. If Congress intended singleness and expertness of administrative remedy under the first Act, how much greater the need under the 1947 amendments with their comprehensiveness of scope and delicate balancing of in-

tests, and if vindication of rights in the first Act was entrusted to a public agency acting in the public interest, how much greater the need for continuing this concept in the second Act where a far broader segment of the public was made liable to federal regulation? One would suppose that Congress would have utilized very clear language if it intended entirely to change the concept of public administration.

The second basic distinction between the Wagner and the Taft-Hartley Acts is that under the latter the Congress was acutely aware, by virtue of decisions of this Court on the subject, of the grave problems of preemption and legislated specifically with that problem in mind. As stated by this Court in *Amalgamated Association v. Wisconsin Employment Relations Board*, 340 U.S., at 397:

> "When it amended the Federal Act in 1947, Congress was not only cognizant of the policy questions that have been argued before us in these cases, but it was also well aware of the problems in balancing state-federal relationships which its 1935 legislation had raised. The legislative history of the 1947 Act refers to the decision of this Court in Bethlehem Steel Co. v. New York State Labor Relations Board, 330 U.S. 767, 91 L. Ed. 1234, 67 S. Ct. 1026 (1947), and, in its handling of the problems presented by that case, Congress demonstrated that it knew how to cede jurisdiction to the states. Congress knew full well that its labor legislation 'preempts the field that the act covers in so far as commerce within the meaning of the act is concerned' and demonstrated its ability to spell out with particularity those areas in which it desired state regulation to be operative."

Aware of the problems of preemption, and aware of the public nature of the Act it was amending and the exclusiveness of remedy thereunder, Congress very significantly did not choose to indicate either by alteration in declaration of policy or in the framework of the Act, or by any affirmative

language, that it intended to change the nature of the Act from that of one of vindication of rights in the public interest by a public agency to that of one of vindication of private rights by private individuals. On the contrary, Congress indicated very specifically that remedies under the 1947 amendments were enforceable only by the same public agency that afforded remedies under the 1935 Act, except in the sole situation where that public agency, by express agreement and under certain conditions, might seek to entrust enforcement to the states.

Subsection (a) of Section 10 of both the 1935 and 1947 Acts contains the grant of power to enforce the provisions of the unfair labor practice section of the Act; in consequence the language of that subsection is of vital importance in the determination of the issues in the present case. In the 1947 Act, as under the 1935 Act, the Board alone is empowered to prevent unfair labor practices. The 1947 Act continues to emphasize, as did the 1935 Act, that this power is only for the Board to exercise: *"This power shall not be affected by any other means of adjustment or prevention that has been or may be established by agreement, law or otherwise."* (Emphasis supplied.) The 1947 Congress, however, omitted the phrase "This power shall be exclusive" which appeared in the 1935 Act. Since this omission is strongly relied upon by petitioners in support of the argument that the Congress did not intend its remedies to be exclusive, the reasons for this omission—namely, to accommodate new and additional remedies not contained in the 1935 Act—are discussed in full in a latter portion of this brief. Whatever significance might otherwise have been attached to this omission as it affects the issue in this case, that significance is entirely dissipated by the new proviso clause which the 1947 Congress added to subsection 8, and it is this proviso clause which, along with subsection (1), is controlling in respect to the question of the extent to which Congress intended the states

to administer or enforce the unfair labor practice provisions of the Act.

The proviso clause undertakes to specify precisely under what circumstances and conditions the states may exercise jurisdiction to enforce the Act. The clause empowers the Board to cede jurisdiction to any state agency in any case (except cases involving four specified industries) but provides that such cession can be accomplished only by express agreement between the Board and the state and only unless the state law applicable to determination of any case thus ceded is consistent with the federal law. The language of this proviso makes clear that Congress considered and legislated directly in respect to state enforcement and carefully delineated under what conditions and circumstances the states could exercise jurisdiction. Having considered the problem and taken action thereon, it is not for the state of Pennsylvania or for this Court to add to or take away from the conditions carefully prescribed by Congress under which the states may attempt to enforce the unfair labor practice sections of the Act. The principal "*expressio unis est exclusio alterius*" is directly applicable here; Congress has outlined certain conditions under which states might exercise jurisdiction and no others can be permitted. As stated by the Court of Appeals for the Second Circuit in a recent decision (*Rabouin v. National Labor Relations Board*, 195 F. 2d 906 at 912):

> "In a matter of such bitter controversy as the Taft-Hartley Act, the product of careful legislative drafting and compromise beyond which its protagonists either way could not force the main body of legislators, the courts should proceed cautiously. For it would appear that Congress has already spoken in this regard."

Subsection (b) through (i), which further deal with prevention of unfair labor practices by the Board, are identical in both the 1935 and 1947 Acts. Three new subsections (j), (k) and (l), are added to the 1947 Act. Sec-

tion 10(j) authorizes the Board in its discretion to seek injunctions against any alleged unfair labor practice. Such injunction can be applied for, however, only after issuance of a complaint. This means that a charge must first have been filed and investigated by the Board, and upon the basis of such investigation the Board determines whether to issue a complaint. In this manner it is made certain that injunctions are not improvidently sought. An exception, however, is set forth under Section 10(l) in the case of union violations of the so-called secondary boycott provisions of the Act; namely, Sections 4, (A), (B) and (C) of Section 8(b). In those cases the Board is required mandatorily to seek preliminary injunctive relief upon the filing of charges and before the issuance of a complaint if a preliminary investigation gives reasonable cause to believe that the charge is true. Section 10(k) deals with the determination of so-called jurisdictional disputes. Thus sections (j), (k) and (l) constitute a comprehensive and detailed scheme for enforcing the unfair labor practice sections of the Act and for obtaining injunctive relief against violations. It is significant that in all cases where any injunctive relief is to be sought, careful screening by an expert tribunal is a prerequisite.

It is difficult to conceive by what process of reasoning or rule of statutory construction it can be argued that Congress was not concerned with whether this carefully thought out plan for the prevention and remedying of alleged violations of Section 8 could be avoided, and with whether the provisions for the assumption of jurisdiction by state agencies under the method provided in the proviso to Section 10 (a) could be disregarded; if Congress contemplated the assumption of jurisdiction by state courts contended for in the instant case, it would hardly have taken such pains to prescribe its own remedy or the conditions under which states could exercise jurisdiction or, in any event, would have added additional language to the 10 (a) proviso clause,

thoroughly indicating such intent. Surely, the language used by Congress speaks for itself and is conclusive that the Congressionally-prescribed remedies are exclusive and that states are to act only under the circumstances set forth under the 10 (a) proviso clause.

Two other sections of the 1947 Act should be mentioned as indicative of the fact that when Congress desired states to assist in any phase of the administration or operation of the Act, it was careful expressly so to provide. Under Section 14 (b) Congress gave the states power to prohibit union-security agreements altogether. The lawmakers explained their reason for this special provision as follows (House Report No. 245, 80th Cong., 1st Sess., p. 40):

> "As under the present act, the power of the Board under the amended act in the matter of unfair labor practices is exclusive. This rule has necessitated a special provision . . . to give to the States a concurrent jurisdiction in respect of closed-shop and other union-security agreements."

Similarly, under Sections 202(c), 203(b) and 8(d) (3), Congress provided for the inclusion of state agencies in the mediation and conciliation of labor disputes by special language suitable to that end.

Given the statutory language and nothing more, it would seem clear that Congress has provided specific remedies for alleged violations of Section 8, which remedies are exclusive, and which would prevent state courts from issuing injunctions, preliminary or otherwise, to prevent such or similar violations upon the application of private parties.

As indicated by the Fourth Circuit in *Amazon Cotton Mill Co. v. Textile Workers Union*, 167 F. (2d) 183, at 186, what this Court said in respect to the Railway Labor Act in *General Committee v. Missouri, K. & T. R. Co.*, 320 U.S. 323, is equally applicable to the Labor-Management Relations Act of 1947; we quote its language by way of summary of our position here:

"On only certain phases of this controversial subject has Congress utilized administrative or judicial machinery and invoked the compulsions of the law. Congress was dealing with a subject highly charged with emotion. Its approach has not only been slow; it has been piecemeal. Congress has been highly selective in its use of legal machinery. The delicacy of these problems has made it hesitant to go too fast or too far. The inference is strong that Congress intended to go no further in its use of the processes of adjudication and litigation than the express provisions of the Act indicate." (320 U.S. at 332.)

As before stated, petitioners rely heavily upon the fact that the 1947 Act the Congress, in conferring jurisdiction upon the National Labor Relations Board under Section 10(a) to remedy unfair labor practices, omitted the phrase "This power shall be exclusive," which appeared in the similar grant of jurisdiction under Section 10(a) of the 1935 Act. Any attempt thereby to infer that state courts have jurisdiction to grant injunctive relief ignores the general structure of the Act, the careful framing of specific remedies for specific violations, and the express language in the proviso clause to Section 10(a), not appearing in the 1935 Act, under which Congress provided that jurisdiction to remedy the unfair practices can be exercised only under express agreement by the Board. These considerations, as held by the Fourth Circuit in the *Amazon Cotton Mill* case, 167 F. (2d) at 187, in disposing of the contention that omission of the word "exclusive" is significant as showing an attempt to open the door to relief in the state courts, indicate that

"... a remedy in the courts not expressly given is not to be inferred; and especially is this true where Congress has worked out elaborate administrative machinery for dealing with the whole field of labor relationships, a matter requiring specialized skill and experience, and has provided for the handling of unfair labor

practices by an administrative agency equipped for the task."

It is to be remembered that use of the word "exclusive" is not controlling in determining whether the enforcement machinery created by Congress precludes other remedies. See *Texas & Pacific Ry. v. Abilene Cotton Oil Co.*, 204 U.S. 426.

Even if there were room for argument on the question, the report of the Conference Committee conclusively indicates that the reason for the omission of the phrase describing that the Board's power of enforcement shall be "exclusive" was to make accommodation for the two new specific grants of jurisdiction contained in the 1947 amendments under Sections 10(j), (k) and (l) and Section 303, namely, that of the districts courts to afford temporary relief and of all courts to entertain suits for damages. The Conference Committee (H.R. No. 510, June 3, 1947, 80th Cong., 1st Sess. 52) stated as follows:

> "The House bill omitted from section 10(a) of the existing law the language providing that the Board's power to deal with unfair labor practices should not be affected by other means of adjustment or prevention, but it retained the language of the present act which makes the Board's jurisdiction exclusive. The Senate amendment, *because of its provisions authorizing temporary injunctions enjoining alleged unfair labor practices and because of its provisions making unions suable*, omitted the language giving the Board exclusive jurisdiction of unfair labor practices, but retained that which provides that the Board's power shall not be affected by other means of adjustment or prevention. The conference agreement adopts the provisions of the Senate amendment by retaining the language which provides the Board's powers under section 10 shall not be affected by other means of adjustment. The conference agreement makes clear that, when two remedies exist, one before the Board and one before the courts, the remedy before the Board shall be in addition to,

and not in lieu of, other remedies." (Emphasis supplied.)

The Fourth Circuit in the *Amazon Cotton Mill* case, *supra*, at 187, relying on this committee report, as well as on the "clear meaning of the statute when its language is considered in light of existing law," stated in this respect as follows:

> "The change in the statute upon which reliance is placed was clearly intended, not to vest the courts with general jurisdiction over unfair labor practices, but to recognize the jurisdiction vested in the courts by section 10, subsections (j) and (l), section 208, and section 303, to which we have heretofore made reference, as well as the power in the Board, conferred by the proviso in section 10(a) to cede jurisdiction to state agencies in certain cases." See Algana Plywood NLRB.

In the light of all the foregoing, it is respectfully submitted that in the field of remedy for alleged violations of the unfair labor provisions of the Taft-Hartley Act, most certainly as clearly as in the field of regulation of peaceful strikes for higher wages, "Congress occupied this field and closed it to state regulation." *International Union v. O'Brien*, 339 U.S. 454, at 457.

B. The Fact That Congress Has Specified Certain Remedies Presumes That It Has Excluded All Others.

Even if the language of the 1947 amendments was not as clear as it is in indicating congressional intent to make the remedies specified in the Act exclusive, nevertheless principles of presumptive exclusion long followed by this Court would serve to preclude the granting of preliminary injunctive relief as attempted in the courts below. The rule of presumption was long ago pronounced in this Court in *Houston v. Moore*, 5 Wheat. 1, at 20, and has been followed by this Court in numerous cases subsequently decided. In

the *Moore* case Mr. Justice Washington, writing for the full court, in speaking of the concurrency of federal and state law, stated that if they

> "... correspond in every respect, then the latter is idle and inoperative; if they differ they must, in the nature of things, oppose each other, so far as they do differ. If the one imposes a certain punishment, for a certain offense, the presumption is, that this was deemed sufficient, and under all circumstances, the only proper one. If the other legislature imposes a different punishment, in kind or degree, I am at a loss to conceive, how they can both consist harmoniously together."

Mr. Justice Holmes classically rephrased this proposition in *Charleston & Carolina R.R. v. Varnadoe Co.*, 237 U.S. 597, at 604, as follows:

> "When Congress has taken the particular subject matter in hand coincidence is as ineffective as opposition, and a State law is not to be declared a help because it attempts to go farther than Congress has seen fit to go."

See also *Missouri Pacific R.R. Co. v. Porter*, 273 U.S. 341, at 345.

The Labor-Management Relations Act reflected the considered judgment of Congress not only as to what substance and form regulation of certain defined labor practices should take but the extent and scope of the remedy for violations and of the forum in which relief could be sought. In it, Congress went so far as it thought right. Petitioners would have Pennsylvania add another remedy and an additional type of relief and a new forum. This it cannot do if the integrity of the federal legislative process is to remain.

A corollary to the usual role of presumption which is directly applicable to the instant case has been recognized by at least four members of this Court dissenting in *Cali-*

fornia v. Zook, 336 U.S. 725. That corollary is that where Congress has entered a field and made particular regulations therein and afforded particular remedies or punishment, affirmative consent by Congress to concurrent or additional remedies or punishments by state or other agencies is required. The Labor-Management Relations Act, of course, contains no such express consent and, therefore, under that doctrine the state action must fall. See 336 U.S. at 757. The *Zook* case involved concurrent state and federal statutes prohibiting interstate transportation without Interstate Commerce Commission permit, the state statute carrying with it a greater penalty. Although the state statute was upheld in a five-to-four decision, the Court found that the federal Act there involved, unlike the Labor Relations Act in the present case, carried with it in its language no indication of an intent to override the state laws and that, unlike the present case, there existed no conflict in terms of application, the Court concluding that:

> "In this case the factors indicating exclusion of state laws are of no consequence in the light of the small number of local regulations and the state's normal power to enforce safety and good-faith requirements for the use of its own highways."

C. Considerations of Rationale and Policy Indicate Congressional Intent to Exclude Injunctive Remedies in the State Courts.

Even though the Act were silent or ambiguous as to Congressional intent in respect to remedy or forum, it is a fair inference, based on policy considerations and on the logic of the situation—on what Congress *must* have intended—that Congress excluded relief or remedy in the state courts and confined remedies to those specified in the Act. As before indicated, when the Act is considered as a whole, in all its comprehensiveness and detail, and with its exact delineation of remedies, it is certainly not reasonable to attribute

an intent to Congress to open wide the use of injunctive processes by private litigants in thousands of state courts in the forty-eight states for the prevention of alleged violations of the unfair practice provisions of the Act or of parallel activities as proscribed under some state statute or common law. If "uniformity of administrative policy and disposition, expertness of judgment, and finality in determination" (*Aircraft Corp. v. Hirsch*, 331 U.S. 752, at 767) were, as in the case of other federal administrative regulations, to be considered a desirable end, most assuredly to confer on private persons the right to seek injunctions for alleged violations in whatever court, state or federal, they could obtain service, would make that end quite unobtainable. Litigants would be prone to seek that forum which they believed was most favorably inclined to their cause. The result would be a "crazy quilt of diversity;" to impute an intent to permit or tolerate such a result would indeed be "a strained and strange way of interpreting the mind of Congress." (See Justice Frankfurter, dissenting in *California v. Zook*, 336 U.S. at 740.

Judge Parker, in the *Amazon Cotton Mill* case, 167 F. (2d) at 190, pictured the consequence of allowing private parties to sue for injunctions in the following words:

> "If labor unions are permitted to invoke the injunctive process of the courts under the Act, so also are employers. If they may invoke jurisdiction of the courts where they themselves have appealed to the Labor Board, they may invoke it where their adversaries have appealed to that Board. It would follow, therefore, that upon the beginning of a proceeding before either the Board or a court, the party proceeded against could, and probably would, begin a proceeding in the other tribunal. More than two hundred local tribunals of general jurisdiction would be clothed with the special jurisdiction now vested in a unified agency with nationwide jurisdiction over labor controversies; and it is not difficult to foresee the confusion that would necessarily result. Certainly the statute should

not be given an interpretation which would lead to such consequences."

Judge Parker was presumably speaking of the two hundred federal district courts; the confusion he predicts would be compounded a thousand times were jurisdiction to enjoin unfair labor practices extended to the state courts as well.

Further, were state courts permitted jurisdiction to remedy unfair labor practices proscribed in federal Act, the National Labor Relations Board would be reduced to a state of idle impotency. Few private litigants would bother with the expert processes of the Board when they could go into a friendly state court and enjoin unfair labor practices. Thus, the statutory provisions of Sections 10(j) and 10(l), which provide the Board with authority to enjoin unfair practices, would be reduced to nullities. Congress could not have intended such carefully studied statutory provisions to lie dormant.

Even if we were to rely on only what Congress must have intended and disregard the statutory language or the rule of presumption, the inevitable conclusion is that the only way in which injunctive relief can be obtained is in the manner specifically provided in the Act; otherwise, enforcement of the Act would be subject to the eroding process of conflicting judicial review at thousands of local state levels.

D. The Legislative History of the 1947 Act Discloses a Direct Intent to Foreclose All Remedies Other Than Those Provided for in the Act, and Specifically to Foreclose Temporary Relief in the State Courts.

The conclusion that Congress intended to foreclose all remedies public, private, state or national, other than those set forth in the 1947 amendments, which has been heretofore gathered from the language of the Act itself, from allowable legal presumption, and from fair inference, is strongly supported by the legislative history of the Act and,

in particular, by the history of those sections providing for relief from the alleged violations of the unfair labor practice provisions of the Act. This history shows that Congress expressly considered the problem of scope of remedy, of whether the exclusive grant of jurisdiction to the National Labor Relations Board contained in the 1935 Act should be continued and, in particular, of whether temporary relief against violations should be obtainable in any court of competent jurisdiction so as to provide a remedy for whatever irreparable injury might be sustained if the Board processes should occasion delay. The legislative history shows clearly that Congress specifically pondered the problem of private relief, weighed the possibility of potential abuses of the injunctive process against the possibility of potential damages to private individuals suffering irreparable injuries because of possible delays, and decided in favor of "procedures under the National Labor Relations Act." (93 Cong. Rec. 5041.) Because of the clarity of expressions of Congressional opinion on this subject, and because they conclusively dispose of the principal argument of those advocating resort to tribunals other than those specified under the Act itself for the purpose of obtaining relief against alleged irreparable injury, the most pertinent portions of the debates and committee reports on this particular subject are set forth below in full.

It was Senator Morse who proposed, under Section 10(j), that injunctive relief for alleged violations be obtainable only through the Board. Commenting on his proposal, Senator Morse stated as follows (93 Cong. Rec. 1912):

> "My proposal would in no way impair the legitimate rights of labor under the Norris-LaGuardia Act and the Clayton Act [15 U.S.C.A. §12, et seq.], since I do not propose that employers be allowed to obtain injunctions against labor or that unions and their members be subjected to the drastic civil and criminal penalties that could be applied in days gone by."

Senate Report No. 105 on S. 1126, 80th Cong., 1st Sess., p. 8, explained Sections 10(j) and 10(l) as follows:

> "After a careful consideration of the evidence and proposals before us, the committee has concluded that five specific practices by labor organizations and their agents, affecting commerce, should be defined as unfair labor practices. Because of the nature of certain of these practices, especially jurisdictional disputes, and secondary boycotts and strikes for specifically defined objectives, the committee is convinced that additional procedures must be made available *under the National Labor Relations Act* in order adequately to protect the public welfare which is inextricably involved in labor disputes.
>
> "Time is usually of the essence in these matters, and consequently the relatively slow procedure of Board hearing and order, followed many months later by an enforcing decree of the circuit court of appeals, falls short of achieving the desired objectives—the prompt elimination of the obstructions to the free flow of commerce and encouragement of the practice and procedure of free and private collective bargaining. Hence we have provided that the *Board, acting in the public interest and not in vindication of purely private rights*, may seek injunctive relief in the case of all types of unfair labor practices and that it shall also seek such relief in the case of strikes and boycotts defined as unfair labor practices." (Emphasis supplied.)

Senators Taft, Ball, Donnell and Jenner issued a supplemental report setting forth objections to the provisions of the bill giving the Board exclusive power to obtain injunctive relief for alleged violations of the unfair practice sections of the Act. The supplemental report (Senate Rep. No. 105 on S. 1126, Supplemental Views, 1 Legislative History of LMRA, 1947, Gov. Printing Office, 1948, p. 460) states as follows:

> "An amendment reinserting in the bill a section making secondary boycotts and jurisdictional strikes unlawful and providing for direct suits in the courts by

any injured party. The committee bill admits that such boycotts and strikes are improper, but it only proposes to make them unfair labor practices. This means that appeal must be made . . . to the National Labor Relations Board. The bill does provide that, on petition of the NLRB regional attorney, the Board may obtain a temporary injunction from a court while it is conducting a hearing on the question whether the strike is an unfair labor practice or not. If it finds that it is, it then may issue a cease and desist order against such a strike and later ask to have this enforced by the court. In our opinion, this is a weak and uncertain remedy for those injured by clearly illegal strikes. It depends upon the decision of the National Labor Relations Board as to whether any action shall be taken, and the conduct of the proceedings will be entirely in the hands of the NLRB attorneys instead of attorneys of the injured party. The facts in such cases are easily ascertainable by any court and do not require the expertness supposed to be one of the virtues of the administrative law procedure. In addition to that, the best estimate of the time lag between the filing of charges with the NLRB and its obtaining of a temporary injunction is not less than two weeks to a month.

"... There will only be a satisfactory remedy if he can go to his local court and obtain an injunction, first temporary and then permanent, against interference of this kind."

In line with these objections, Senator Ball then proposed an amendment which was designed to permit employers to obtain injunctions in district courts against jurisdictional strikes and secondary boycotts. The Ball amendment read as follows (93 Cong. Rec. 4887):

"(b) The district courts of the United States shall have jurisdiction in proceedings instituted by or on behalf of the United States, *or by any party* suffering loss or damage or threatened with loss or damage by reason of any violation of subsection (a), to prevent and restrain violations of such subsection. It shall be the duty of the several district attorneys of the United

States, in their respective districts, under the direction of the Attorney General, to institute proceedings to prevent and restrain violations of such subsection." (Emphasis supplied.)

Senator H. Alexander Smith, of New Jersey, attached a supplemental statement at the end of the committee report, expressing his opposition to this amendment (Senate Report No. 105 on S. 1126, Supplemental Views) as follows:

"I am opposed to this amendment (Amendment four proposed by the other Senators). While I am in entire accord that there can be no defense of secondary boycotts and jurisdictional strikes, I feel that the reported bill treating these matters as unfair labor practices is the preferable way to deal with them—putting the responsibility on the National Labor Relations Board. Furthermore, I do not favor the opening up of the Norris-LaGuardia Anti-Injunction Act except on petition of the Government. By treating these evils as unfair labor practices, the use of the injunction is given to the National Labor Relations Board and is not open to abuse by individual employers. At least we should experiment with this procedure before adopting the more severe remedies."

Senator Ives of New York expressed his opposition to this amendment as follows (93 Cong. Rec. 5041):

"It has been pointed out that possibly the unfair labor practice procedure might not be so effective as the direct injunction obtained by the employer. To some extent, perhaps, it would not be. Perhaps there would not be the immediate action obtainable by injunction, but by and large, the entire suggested procedure is intended to deal with the National Labor Relations Act. The provisions with respect to jurisdictional disputes and with respect to secondary boycotts, which are met by a statutory denial, deal fundamentally with the National Labor Relations Act. In effect, such boycotts and strikes would constitute violation of that act, if indeed they would not actually violate other laws.

The remedy should be found in procedures under the National Labor Relations Act. So I say that if there should be a slight delay—and I do not think there would be, once the system is established—but if there should be a slight delay, the right approach is through the provisions of the committee bill without opening the door to abuses which formerly existed and which resulted in the passage of the Norris-LaGuardia Act. I have stated my second reason for opposing the amendment offered by the Senator from Minnesota."

Senator Morse voiced his objections as follows (93 Cong. Rec. 4841):

"It has been my consistent endeavor while this legislation has been under discussion to vest determination of labor problems so far as it is humanly possible to do so in a single organization that is expert in labor problems. I assume that if the debates on this bill have served no other purpose they have demonstrated to all Members of the Senate the complexity of this field. Labor problems are complex, as complex, indeed, as our entire social structure, since the great mass of our people are workers. It is a field which has been growing ever more complex as our society has come to depend upon the output of large industrial enterprises. Nor will these problems be simplified if the legislation we have here proposed becomes law. Close day-to-day contact with these problems is necessary if able persons are to keep themselves even reasonably informed.

"I am confident, despite the high regard in which I hold the district judges of the United States, that they have neither the background, the desire, or the time, to become experts in these matters. It is one thing to grant to the district courts, upon application of the Board, an interim power to maintain the status quo pending resolution of the problem by the body which we have selected as the expert body to handle such problems. It is quite a different thing to do what this bill proposes, namely, to throw these matters for final decision into the laps of the approximately 250 district judges of the United States, some of whom may have

some knowledge of the field, but all of whom can certainly not pretend to the experts. . . .

". . . I cannot be convinced that it is sound legislation to disperse the authority over these problems, to draw into the orbit of their handling, a host of district attorneys and Federal judges without competence in the field or, by splitting up authority among all the district attorneys and district judges of the land, to make impossible the development of a uniform body of precedent and decisions, harmoniously integrated with each other over the entire economy."

In the course of debate over the Ball amendment, Senator Ball answered, "Yes, of course," to Senator Ellender's question whether or not it was true in respect to the bill itself, as distinguished from Ball's amendment, that "all of the unfair labor practices covered by the bill against management or labor are processed through the Board." (93 Cong. Rec. 5040.) The Ball amendment was put to vote and defeated 63-28 (93 Cong. Rec. 4847).

Apparently as a compromise, Senator Taft then introduced an amendment authorizing suits for damages caused by jurisdictional strikes and secondary boycotts (93 Cong. Rec. 4843), which was enacted as Section 303 of the Act (93 Cong. Rec. 4874). In answer to a clarification requested by Senator Morse as to whether the Taft proposal might give rise to the granting of injunctive relief in that type of cases, Senator Taft replied (93 Cong. Rec. 5074):

"Let me say in reply to the Senator or anyone else who makes the same argument, that that is not the intention of the author of the amendment. It is not his belief as to the effect of it. It is not the advice of counsel to the committee. Under those circumstances I do not believe that any court would construe the amendment along the lines suggested by the Senator from Oregon."

What is significant about the foregoing legislative history is not only the clear indication of intent to limit rem-

edies to those specifically provided for in the Act, but also the fact that none of the legislators ever even so much as assumed that the express provisions affording remedies set forth in the Act would be anything but exclusive. As stated by Judge Parker in the *Amazon Cotton Mill Co.* case, 167 Fed. (2d) at 189, in commenting upon this legislative history:

> "It is hardly thinkable that, if the effect of the Labor Management Relations Act was to make a fundamental change in the jurisdiction to deal with unfair labor practices, this important fact would not have dawned upon some member of the House or the Senate and have been referred to in the course of the lengthy debate of a measure that was passed over a Presidential veto. That no such suggestion was made gives ample support to the interpretation which, as we have already indicated, we should place upon the text of the act if the history of its passage and the Congressional debates were not available to us."

That Court further stated in respect to this history, at p. 188:

> "There is nothing in the history of the act, the reports of committees or the debates in Congress which even vaguely supports the contention that its effect was to vest jurisdiction in the District Courts to grant relief against unfair labor practices. Everything said by anyone remotely bearing on the matter is to the contrary."

It would serve no purpose to rehearse before this Court the justifications and policy considerations which support the determination of Congress, as a means of eliminating any possibility of a revival of the abuses of the injunctive process which gave rise to the Norris-LaGuardia Act (see 93 Cong. Rec. 4834-4847, 4864, 4868, 6446, 4132-4133, S. Rep. No. 105, 80th Cong., 1st Sess., 56), to subject injunctive relief to a screening process by a responsible and expert fed-

eral tribunal, even at the risk of subjecting employers to whatever irreparable injury might be occasioned by the necessity to resort exclusively to the procedures provided under the Act. Such considerations, like those advanced by the Alabama and Oregon courts as arguments for permitting injunctive relief by private individuals to protect private property rights, are best addressed to the Congress which alone has the power to make the determination of an appropriate remedy for enforcement of its own regulations in the field of interstate commerce. *Cf. Lincoln Federal Labor Union No. 19129, et al. v. Northwestern Iron and Metal Co., et al., 335 U.S. 525.*

CONCLUSION

Whatever the test or method of approach utilized, it is clear that Congress, in the 1947 Amendments to the Wagner Act, intended to continue to confine remedies for alleged violations of the Act, whether occurring under state or federal law, to those specified in the Act, as amended, and has intended to preclude the states from exercising any jurisdiction to enforce the provisions of the Act, or similar provisions of state law except under certain conditions and circumstances not present in this case. Congress having preempted the field, the courts of Pennsylvania are without jurisdiction in the premises. Accordingly, it is respectfully requested that the decision of the Supreme Court of Pennsylvania herein be upheld.

Respectfully submitted,

J. Albert Woll,
Herbert S. Thatcher,
James A. Glenn,
736 Bowen Building,
Washington 5, D. C.

Counsel for American Federation of Labor